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November 16, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: Summary of the Ex Parte Meetings
MB Docket No. 09-182
MB Docket No. 07-294

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission Rules, this is a notice of several ex parte presentations that were made in the above-referenced matter. On November 14, 2012, Thomas Walker, a representative of the Mid-West Family stations, Rosemary Harold of this law firm, and the undersigned had five separate meetings at the FCC with the persons listed below:

1. Sarah Whitesell, Deputy Chief of the Media Bureau
Hillary DeNigro, Chief of the Media Bureau's Industry Analysis Division
Benjamin Arden, Attorney-Advisor, Media Bureau's Industry Analysis Division
2. Erin McGrath, Legal Advisor to Commissioner Robert McDowell
3. Nicholas Degani, Legal Advisor to Commissioner Ajit Pai
4. Dave Grimaldi, Chief of Staff and Legal Advisor for Commissioner Mignon Clyburn
5. Alex Hoehn-Saric, Policy Director for Commissioner Jessica Rosenworcel

The same content was discussed at each of the meetings. These meetings were to discuss the Mid-West Family's belief that the Commission, in defining circumstances in which waivers of the ownership rules adopted by the FCC should be granted, needs to take into account situations

where closely-held companies pass their ownership interest, on the death or departure of individual owners, to others in the company on the basis of contract rights. Mid-West has argued in many ownership proceedings since the adoption of the 2003 multiple ownership rules that grandfathered combinations of radio stations not be broken up when there is a transfer event in these kinds of ownership structures.

The Commission has already held that grandfathered combinations need not be broken up when a transfer of control of a broadcast licensee is caused by the death of an owner, and the owner's interests in the broadcast company pass to his or her heirs or estate. Mid-West argued in these meetings that the Commission should also, in the case of closely-held companies where the owners of the station are involved in their operations, waive divestiture obligations if the ownership interests are transferred not by will or intestacy, but instead by a contract obligating the owners to sell their stock back to the company or its shareholders on death or disassociation with the stations.

The five companies that make up the Mid-West Family stations provide an example of a situation where this issue arises.¹ Shares in these companies are sold only to employees and others directly involved in the operations of the stations. If a shareholder dies or leaves the company, his or her stock is required, by shareholders' agreements signed by each shareholder, to be sold back to the company. Employees, once they are determined to be a person who management believes will be a long-term employee of the station, are offered opportunities to purchase shares held by the company. Stock does not pass to heirs or other outsiders. In effect, the companies act much like law firm partnerships, where the company goes on even though older "partners" may die or move to other firms, while new partners are brought in to replace those that have left.

This structure has fostered a very diverse ownership – with over 50 shareholders holding interests in the companies – with no one individual controlling the company or, in the aggregate, holding more than approximately 20% of the ownership. This kind of organization has fostered diversity of ownership, as there are many individuals at all levels of the company owning interests in the company, and localism, as the employees working at each station have a vested interest in making sure that the company in which they are a part owner serves the interests of the communities in which they live and work. Essentially, the Mid-West Family is a family based on common employment and business purpose, not based on blood. In many ways, as Mid-West pointed out, such a family is often more interested in the long-term success of the broadcast operations than are families defined only by familial blood relationships.

¹ The Mid-West Family Stations are interrelated companies holding stations in five radio markets – Mid-West Management, Inc. (Madison, Wisconsin); Family Radio, Inc. (La Crosse, Wisconsin); WSJM, Inc. (St. Joseph, Michigan); Long Nine, Inc. (Springfield, Illinois), and MW Springmo, Inc. (Springfield, Missouri).

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The structure also fosters stability – with the Mid-West Family operating radio stations in some of its markets for over 50 years. But, over time, as owners die or move to other jobs, and new shareholder-employees are added to the ownership rolls, a transfer event will occur when “new” shareholders become the majority. This will occur through a gradual process – not through any single economic event like a sale of the cluster of radio stations in a market. Mid-West is asking that the Commission recognize that, in situations such as its own, a transfer event caused by stock buy-back agreements be treated just as a transfer event caused by a death of a shareholder and a transfer to heirs or legatees, and be exempted from any divestiture obligation for noncompliant combinations that may exist at that time.

While the Mid-West Family structure may be somewhat unique, similar issues could arise in other closely-held companies where owners have buy-back agreements or partnership agreements that require departing owners to sell their interests back to the remaining owners. And, while the grandfathered clusters are principally those that arose when the FCC changed from a contour-based methodology of determining radio markets to one based on Arbitron-defined markets, new grandfatherings can arise. These situations can arise when Arbitron creates and begins to measure new markets in areas where ownership considerations are now based on contour overlaps, or where Arbitron changes the counties that are included in an Arbitron market. Thus, it is important that the FCC recognize this situation, and formally state that a waiver is appropriate in circumstances such as that set out by Mid-West.

Mid-West provided a suggestion for language to be included in the upcoming multiple ownership order. A copy of that draft language is attached.

A copy of this notice is being submitted in the relevant dockets. Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,



David Oxenford

cc: Sarah Whitesell
Hillary DeNigro
Benjamin Arden
Eric McGrath
Nicholas Degani
Dave Grimaldi
Alex Hoehn-Saric

Attachment

In its 2003 Report and Order on the Commission's Multiple Ownership rules, the Commission grandfathered certain radio ownership combinations permitted under prior rules but impermissible under the rules adopted in that order. Grandfathering was permitted so that the owners of these combinations could "be afforded an opportunity to retain the value of their investments made in reliance on our rules and orders." *Id.* at ¶484. The Commission made an explicit exception allowing not only the continuing ownership of such combinations, but their assignment or transfer "to heirs or legatees by will or intestacy if no new ownership violation would occur." *Id.* at footnote 105. In comments filed in this proceeding by Mid-West Family Stations, we are persuaded that there are other similar situations in closely-held businesses where the death or departure of owners could individually or over time trigger a transfer event, even though the departing owner's interest is redistributed to existing owners (through buy-back agreements or otherwise). We agree that, in situations like that presented by Mid-West, where there is a continuity of ownership through a sale of the majority of the departing owner's interest to existing owners, and where the grandfathered combination does not unduly restrain competition in the relevant market, such ownership combinations should be granted waivers to preserve the investment value of the remaining owners in these closely-held entities.